IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

COMPANY PETITION NO.557 OF 1985

Makbro Investment Pvt. Ltd. & Ors. ..Petitioners.

Vs.

Seth Industries Ltd. ..Respondent.

...

None for the Petitioners.

Mr. Gaurav i/b Madhukar Harmawar for the Respondent.

...

CORAM: **DR. D.Y. CHANDRACHUD, J.**

21st June, 2007.

P.C. :

1. By an order passed by the learned Company Judge on 10th April, 1987, the Company Petition was made absolute in terms of prayer clauses (a) and (b) by directing the winding up of the company and directing the Official Liquidator to take charge of the assets and properties of the company in the course of winding up. The order of the Learned Single Judge was carried in appeal. On 20th July, 1992 a Division Bench of this Court allowed the appeal and set aside the order of the Learned Single Judge dated 10th April, 1987. The matter was remanded back to the Company

Judge for disposal on merits. The order of the Division Bench records that after the institution of the appeal the company had deposited an amount of Rs.2,23,250/- with the Prothonotary and Senior Master. The original Petitioner had sought permission to withdraw the Petition. Before the grant of such permission, it was necessary to publish an advertisement intimating the fact that the Original Petitioner desires to withdraw the Petition. On publication of the advertisement, three creditors (Makbro Investment Pvt. Ltd., Sonal Makharia and Prashant Makharia) sought permission for substitution in place of the Original Petitioner. The judgment of the Division Bench records that such permission was granted by an order dated 11th August, 1987 and the Appeal memo was thereupon amended. The net result of the order of the Division Bench dated 20th July, 1992 was that the order of winding up was set aside. The proceedings were remitted back to the Company Judge for fresh disposal.

2. The Roznama of the proceedings inter alia contains an order dated 6th October, 1993 by which the hearing of the Petition

was adjourned since proceedings were pending before the B. I. F. R. The Court has been informed that the company is no longer before the B. I. F. R. and the proceedings under the Sick Industrial Companies (Special Provisions) Act, 1985 have come to an end. Counsel appearing for the Respondent has placed on the record a copy of the judgment and order dated 7th March, 2007 of the Division Bench of the Delhi High Court in Writ Petition Civil 3326 of 1992 by which the order of the B. I. F. R. dated 25th May, 1990 as confirmed in appeal by the A. A. I. F. R. on 27th May, 1992 recommending the winding up of the Respondent were set aside.

3. In view of the statement made before the Court on behalf of the Respondent and the receipts placed on the record, it appears that the claims of the substituted Petitioning Creditors have been duly fulfilled. The Company Petition shall accordingly stand dismissed. As a consequence thereof, the Prothonotary and Senior Master shall now refund to the Company an amount of Rs.2,23,250.42 deposited by the Company together with accrued interest, if any, thereon after the expiry of a period of eight weeks

from today.